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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,091	06/10/2002	Karl L. Denninghoff	TLSYM1110	7107
26379	7590	01/19/2006	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US, LLP 2000 UNIVERSITY AVENUE E. PALO ALTO, CA 94303-2248			FERRIS, DERRICK W	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/064,091	Applicant(s) DENNINGHOFF, KARL L.	
	Examiner Derrick W. Ferris	Art Unit 2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,18,19,28-30,40-42, 50 and 51 is/are rejected.
- 7) ☒ Claim(s) 3-17,20-27,31-39 and 43-49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Oath/Declaration*

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: Applicant's priority date is not correct for their provisional application. The correct date for provisional application 60/297,119 should be 6/9/2001.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, steps (a), (b), (c), (d) recited e.g., in claim 1 and at least claim 5 must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because a duplicate figure 5 was provided in the submitted drawings filed 6/10/2006 (see pages 45 and 46). As such, applicant should confirm the deletion of one of the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1, 2, 18, 19, 28-30, 40-42 and 51** are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,859,460 B1 to *Chen*.

As to **claim 1**, *Chen* teaches a consuming device as an Internet Device 14 with further structure illustrated e.g., in figure 5. *Chen* teaches processing more than one frame (i.e., data block), thus *Chen* teaches step (a). With respect to step (b), *Chen* teaches that the amount of data frames stored in a jitter buffer can also be used, see e.g., column 9, lines 25-46. Thus *Chen* teaches determining a number of samples remaining in a queue of a consuming device of the next block. With respect to step (c), variability is defined with respect to figure 6 and in particular, the time that the frame was late. Step (d) is taught since the remaining number of samples can be reduced given the setting of the queue length, see e.g., column 5, lines 30-45.

As to **claim 2**, the reducing the size of the queue increases the rate of consumption.

As to **claim 18**, see e.g., figure 8a where the steps are repeated starting at step 115.

As to **claim 19**, see similar rejection to claim 2.

As to **claim 28**, see similar rejection to claim 1. Data is ready to be added based on the jitter buffer controller 48.

As to **claim 29**, see similar rejection to claim 1.

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As to **claim 30**, see similar rejection to claim 2.

As to **claim 40**, see similar rejection to claim 18.

As to **claim 41**, see similar rejection to claim 29. In addition, note that the process is further performed in software, see e.g., column 3, lines 40-57.

As to **claim 42**, see similar rejection to claim 2.

As to **claim 51**, see similar rejection to claim 29. In addition, note that the process is further performed in hardware and software, see e.g., column 3, lines 40-57.

6. **Claim 50** is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,735,192 B1 to *Fried et al.* ("*Fried*").

As to **claim 50**, with respect to polling a consuming device for number of samples consumed between at intervals, see e.g., collecting delay measurements in step 820 of figure 8 with respect to the absolute delay. In particular note that N consecutive packets are received during a time interval, see e.g., column 7, lines 3-9. With respect to comparing number of samples consumed (i.e.,  $X_j$  or absolute delay) to a calculated number of samples that should have been consulted (i.e., D or estimated fixed delay as computed in step 710 in figure 7), see e.g., steps 830 and 840.

7. **Claim 50** is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,665,728 B1 to *Graumann et al.* ("*Graumann*").

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C.

102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37

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CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

As to **claim 50**, *Graumann* teaches polling a consuming device for number of samples consumed between at intervals by using the statistics monitoring mechanism 402 to gather statistics to e.g., measure arrival fluctuations of the supply of data packets received by the system, see e.g., column 5, lines 26-47. Comparing a number of samples consumed calculated number of samples that should have been consumed between the plurality of time intervals based on the consuming device setting the consumption rate is taught by computing the minimum latency, at e.g., column 5, lines 47- column 6, line 4. In particular, the playback queuing mechanism 404 is capable of building latency in the supplying of data packets, based on the estimate determined by the under-run forecasting module 400 and the arrival fluctuations measured by the statistics monitoring mechanism 402. In particular, note that the time difference (i.e., “variability”) is exponentially weighted and then “histogrammed” (i.e., comparing the number of samples consumed, or absolute time, to a calculated number of samples that should have been consumed ,or under-run prediction time).

***Allowable Subject Matter***

8. **Claims 3-17, 20-27, 31-39, and 43-49** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick W. Ferris whose telephone number is (571) 272-3123.

The examiner can normally be reached on M-F 9 A.M. - 4:30 P.M. E.S.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DWF

Derrick W. Ferris  
Examiner  
Art Unit 2663

  
DERRICK FERRIS  
PATENT EXAMINER